

1 **KAPLAN FOX & KILSHEIMER LLP**  
2 Laurence D. King (SBN 206423)  
3 *lking@kaplanfox.com*  
4 Mario M. Choi (SBN 243409)  
5 *mchoi@kaplanfox.com*  
350 Sansome Street, Suite 400  
San Francisco, CA 94104  
Telephone: (415) 772-4700  
Facsimile: (415) 772-4709

6 **KAPLAN FOX & KILSHEIMER LLP**  
7 Robert N. Kaplan (to be admitted *pro hac vice*)  
8 *rkaplan@kaplanfox.com*  
9 Jeffrey P. Campisi (to be admitted *pro hac vice*)  
10 *jcampisi@kaplanfox.com*  
11 850 Third Avenue, 14th Floor  
12 New York, NY 10022  
13 Tel: (212) 687-1980  
14 Fax: (212) 687-7714

11 || *Attorneys for Plaintiff*

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

15 MARK SIDOLI, on behalf of himself and all  
others similarly situated.

Case No. 5:19-cv-1320

## CLASS ACTION

# CLASS ACTION COMPLAINT FOR VIOLATIONS OF FEDERAL SECURITIES LAWS

## JURY TRIAL DEMANDED

17 ||

V.

NIO INC., BIN "WILLIAM" LI, and  
LOUIS T. HSIEH a/k/a TUNG-JUNG HSIEH,

## Defendants.

1 Plaintiff Mark Sidoli (“Plaintiff”), by his attorneys, on behalf of himself and all others  
 2 similarly situated, alleges the following based upon the investigation of Plaintiff’s counsel, except  
 3 as to allegations specifically pertaining to Plaintiff, which are based on personal knowledge. The  
 4 investigation of counsel included, among other things, a review of Nio, Inc.’s (“Nio” or the  
 5 “Company”) public filings with the United States Securities and Exchange Commission (“SEC”),  
 6 press releases issued by the Company, media, news and analyst reports about the Company,  
 7 conference calls with Company executives and investors, and other publicly available data,  
 8 including, but not limited to, publicly available trading data relating to the price and trading volume  
 9 of Nio American Depository Shares (“ADS”).

10 **I. INTRODUCTION**

11 1. This action is a securities fraud action brought under Sections 10(b) and 20(a) of the  
 12 Securities Exchange Act of 1934 (the “Exchange Act”) and Rule 10b-5 promulgated thereunder by  
 13 the SEC brought by Plaintiff on behalf of all persons and entities who purchased the publicly traded  
 14 ADSs of Nio from January 10, 2019 through March 5, 2019, inclusive (the “Class Period”).

15 2. Defendants are Nio, Bin “William” Li (“Li”), the Company’s Chief Executive  
 16 Officer and Chairman of the Board of Directors, and Louis T. Hsieh a/k/a Tung-Jung Hsieh  
 17 (“Hsieh”), the Company’s Chief Financial Officer (collectively, the “Defendants”).

18 3. Nio designs, manufactures and sells electric vehicles in the People’s Republic of  
 19 China, the U.S., Germany and the U.K. The Company reportedly has been compared to Tesla Inc.

20 4. The Company launched its first volume manufactured electric vehicle, the seven-  
 21 seater “ES8,” in December 2017 and started delivering vehicles to customers in June 2018. The  
 22 ES8 is an all-aluminum alloy body, premium electric SUV that Nio states offers exceptional  
 23 performance, functionality and mobility lifestyle.

24 5. In September 2018, Neo became the first Chinese all-electric car company to debut  
 25 on the New York Stock Exchange. On September 11, 2018, Nio closed its initial public offering of  
 26 160 million ADSs at an offering price of \$6.26 per ADS, raising over \$1 billion. The Company  
 27 estimated that it would receive net proceeds of approximately \$955 million from the offering.

28

1       6.     In December 2018, the Company launched a five-seater ES6, with delivery expected  
 2 to begin in late March 2019, and a six-seater version of the ES8.

3       7.     During the Class Period, Defendants represented that sales of Nio's ES8 were  
 4 significantly growing, reaching 11,348 vehicles for the year ended December 31, 2018, and that the  
 5 Company experienced "solid ramp-up in production and delivery in 2018, which demonstrated our  
 6 execution capabilities," and represented that demand for the ES8 and ES6 was strong.

7       8.     In the third quarter of 2018, the Company delivered 3,268 ES8s. In the fourth  
 8 quarter of 2018, Nio delivered 7,980 ES8s, representing growth of over 144% in ES8 deliveries.

9       9.     However, unknown to investors, by the beginning of the Class Period, demand for  
 10 Nio's vehicles was materially declining and the Company was experiencing material adverse trends  
 11 that were negatively affecting the Company's sales and revenue.

12      10.    Defendants' representations through the Class Period caused Nio ADSs to trade at  
 13 artificially inflated prices.

14      11.    On January 29, 2019, after the close of trading, the Company filed a report with the  
 15 SEC on Form 6-K that contained "Management's Discussion and Analysis of Financial Condition  
 16 and Results of Operations" that repeated the Company's sales through December 31, 2018 and  
 17 disclosed a proposed offering of \$650 million in convertible senior notes.

18      12.    According to UBS, on a conference call on January 30, 2019 to discuss the proposed  
 19 issuance of \$650 million in convertible notes, Nio's management reassured investors that demand  
 20 was strong for the ES8 and ES6 and that any change in Chinese government subsidies would have  
 21 "much less impact" on Nio because premium car buyers are less price sensitive and that Nio  
 22 management "expects demand to be resilient." In other words, Nio represented that even if the  
 23 Chinese government lowered or eliminated electric car subsidies, demand would remain strong for  
 24 its vehicles.

25      13.    On January 30, 2019, Nio ADS increased from a closing price of \$6.94 per ADS on  
 26 January 29, 2019, to close at \$7.46 per ADS on January 30, 2019, an increase of \$0.52 per ADS or  
 27 approximately 8% on heavier than usual volume of over 28 million ADSs.

1       14. On February 4, 2019, the Company disclosed the closing of the \$650 million  
 2 convertible senior notes offering.

3       15. On February 24, 2019, a segment aired on *60 Minutes* concerning Nio. Defendant  
 4 Li represented that Nio exceeded its goal of delivering 10,000 cars in 2018 and was ramping up  
 5 production.

6       16. On February 25, 2019, the following trading day, Nio ADSs increased from a close  
 7 on February 22, 2019 of \$8.17 per ADS, to close at \$9 per ADS on February 25, 2019, an increase  
 8 of over 10% on very heavy volume of over 52 million ADSs.

9       17. Then, just nine days later, on March 5, 2019, after the close of the market, Nio  
 10 disclosed its fourth quarter and full year ended December 31, 2018 financial results. Defendants  
 11 shocked investors when they disclosed that for January 2019, the Company delivered 1,805 ES8s, a  
 12 decline of over 45% from December 2018, and for February 2019, the Company delivered 811 ES8s,  
 13 a decline of over 55% from January 2019 deliveries. Further, the Company stated that it expected  
 14 between 3500 and 3800 ES8 sales for the quarter ending March 31, 2019—just 884-1184 sales in  
 15 March 2019, representing a decline of over 52% over fourth quarter 2018 sales.

16       18. Defendant Hsieh explained the reasons that Nio ES8 deliveries materially declined:  
 17           we expect a greater-than-anticipated sequential decline in deliveries  
 18           in the first quarter of 2019, partially due to accelerated deliveries  
 19           made in the end of last year in anticipation of EV subsidy reductions  
 20           in China in 2019; number two, seasonal slowdown surrounding the  
 21           January 1 and Chinese New Year holidays; number three, soft  
 22           macroeconomic conditions in China, particularly in the auto sector.  
 23           As a result we expect ES8 deliveries in the first quarter to total  
 24           between 3,500 and 3,800 units.

25       19. Hsieh further stated that the trends negatively affecting Nio sales that were  
 26 experienced in the first quarter of 2019 would continue into the second quarter of 2019, indicating  
 27 that the material decline in Nio's ES8 sales went beyond first quarter seasonality: "[w]e expect  
 28 deliveries in the second quarter of 2019 to reflect continued weakness as we await the result of the  
 2019 EV subsidy policy in China and improvement in the macroeconomic conditions."

20. Further, Defendant Li disclosed that Defendants had been experiencing material  
 21 manufacturing difficulties with the Company's "made-to-order" business model for at least six

1 months: “ES8 is our first product. And from manufacturing to delivery, in terms of the readiness of  
 2 supply chain, quality and software, we need to improve a lot. And for the past six months, we’ve  
 3 experienced a lot of challenges. And some days we need to manufacture at least 100 or 200 cars  
 4 and we need to deliver that many cars every day, and this is a huge pressure for us. And I guess to  
 5 say that we have to overcome that period of time, and I – we appreciate our team for this great  
 6 contribution.”

7       21.     On March 6, 2019, Nio’s ADSs declined from a closing price on March 5, 2019 of  
 8 \$10.19 per ADS, to close at \$8.01 per ADS, a decline of \$2.01 per ADS or over 21%, on heavy  
 9 trading volume of over 73 million ADSs. On March 7, 2019, Nio’s ADSs declined an additional  
 10 \$0.92 per ADS or over 11% to close at \$7.09 per ADS.

11       22.     According to *Bloomberg News*, “BofAML analyst Ming Hsun Lee lowered his  
 12 rating on NIO to underperform from neutral, noting lower-than-expected sales growth for the ES8  
 13 and a ‘rich valuation.’” *Bloomberg News* further reported that one analyst “noted that while NIO’s  
 14 fourth-quarter numbers were on the soft side, its demand concerns may actually prove more  
 15 damaging for investors’ long-term outlook on the company. NIO’s fourth-quarter release pointed to  
 16 February deliveries of just 811 units, Zhu said, adding that lower capacity utilization is expected to  
 17 weigh on gross margins in the first quarter.”

18       23.     The *Motley Fool* made the following observation concerning Defendants’  
 19 disclosure: “investors may be more concerned about the company’s outlook for the year ahead. CFO  
 20 Louis T. Hsieh said that the company’s deliveries would likely be weak, at least through the first  
 21 half of the year, due to uncertainty around China’s economy and the status of a government subsidy  
 22 for buyers of electric vehicles.”

23       24.     As a result of Defendants’ wrongful acts and omissions, and the precipitous decline  
 24 in the market value of the Company’s ADSs, Plaintiff and other Class members have suffered  
 25 significant losses and damages.

26       **II. JURISDICTION AND VENUE**

27       25.     The claims asserted arise under Sections 10(b) and 20(a) of the Exchange Act and  
 28 Rule 10b-5 promulgated thereunder. Jurisdiction is conferred by Section 27 of the Exchange Act.

1      Venue is proper in this district throughout the Class Period and Defendants made materially false  
 2 and misleading representations to investors that were disseminated to investors in this District.

3            26.      In connection with the facts and omissions alleged in this complaint, Defendants,  
 4 directly or indirectly, used the means and instrumentalities of interstate commerce, including, but  
 5 not limited to, the mails, interstate telephone communications, and the facilities of the national  
 6 securities markets.

7      **III. PARTIES**

8            27.      Plaintiff is a resident of Queens County, New York. He purchased Nio ADSs as  
 9 detailed in the certification attached hereto and was damaged thereby.

10           28.      Defendant Nio is based in Shanghai in the People's Republic of China. The  
 11 Company's ADSs trade on the New York Stock Exchange under the symbol "NIO." The Company  
 12 maintains its U.S. office in this District in San Jose, California. The Company does business in the  
 13 U.S. as Nio USA, Inc.

14           29.      As of July 31, 2018, the Company's San Jose, California office consisted of 546  
 15 employees, 56 of which were focused on vehicle engineering. In San Francisco, California, the  
 16 Company employed 16 employees focused on user experience and interface. The Company's San  
 17 Jose and San Francisco offices purport to focus on innovation in the areas of: autonomous systems,  
 18 artificial intelligence, electric powertrain technology, digital systems, cloud architecture, digital  
 19 cockpit security, user experience, user interface and vehicle engineering.

20           30.      Defendant Li was the Chairman of the Company's Board of Directors and Chief  
 21 Executive Officer at all relevant times.

22           31.      Defendant Hsieh was the Company's Chief Financial Officer at all relevant times.

23           32.      Defendant Li and Hsieh are referred to herein as the "Individual Defendants." The  
 24 Individual Defendants, because of their positions with the Company, possessed the power and  
 25 authority to control the contents of Nio's press releases, SEC filings and presentations to securities  
 26 analysts, money and portfolio managers and institutional investors, *i.e.*, the market. The Individual  
 27 Defendants were provided with copies of the Company's press releases and SEC filings alleged  
 28 herein to be misleading prior to or shortly after their issuance and had the ability and opportunity to

1 prevent their issuance or cause them to be corrected. Because of their positions and access to  
 2 material non-public information available to them but not to the public, the Individual Defendants  
 3 knew that the adverse facts specified herein had not been disclosed to and were being concealed  
 4 from the public and that the positive representations which were being made were then materially  
 5 false and misleading.

6 **IV. CLASS ACTION ALLEGATIONS**

7 33. Plaintiff brings this action as a class action pursuant to Federal Rules of Civil  
 8 Procedure 23(a) and 23(b)(3) on behalf of a class of all persons and entities who purchased the  
 9 publicly traded ADS of Nio during the Class Period.

10 34. The members of the Class are so numerous that joinder of all members is  
 11 impracticable. While the exact number of Class members is unknown to Plaintiff at the present time  
 12 and can only be ascertained through appropriate discovery, Plaintiff believes that there are hundreds  
 13 of members of the Class located throughout the United States. During the Class Period, at least  
 14 160 million Nio ADSs were issued and outstanding.

15 35. Plaintiff's claims are typical of the claims of the members of the Class. Plaintiff and  
 16 all members of the Class have sustained damages because of Defendants' unlawful activities alleged  
 17 herein. Plaintiff has retained counsel competent and experienced in class and securities litigation  
 18 and intends to pursue this action vigorously. The interests of the Class will be fairly and adequately  
 19 protected by Plaintiff. Plaintiff has no interests which are contrary to or in conflict with those of the  
 20 Class that Plaintiff seeks to represent.

21 **V. FALSE AND MISLEADING STATEMENTS**

22 36. On January 10, 2019, the Class Period begins when the Company issued a press  
 23 release on Globe Newswire titled "NIO Inc. Provides December 2018 Delivery Update." The press  
 24 release stated, in part, the following:

25 As of December 31, 2018, aggregate deliveries of the Company's  
 26 ES8, its 7-seater, high-performance premium electric SUV, reached  
 11,348 vehicles, 3,318 of which were delivered in December.

27 "With 11,348 ES8 deliveries in 2018, we exceeded our delivery goal  
 28 for our first calendar year as a public company," said William Li,  
 founder, chairman and chief executive officer of NIO. "2018 has

been a milestone year for us, as we produced and delivered over 11,000 ES8s and launched our second production car, the ES6, a 5-seater high-performance premium electric SUV on NIO Day in December 2018. We will continue to focus on market penetration by delivering high-quality products and holistic services to our users and to improve the system efficiency of our development and operations.”

“We are pleased with the solid ramp-up in production and delivery in 2018, which demonstrated our execution capabilities,” added Louis T. Hsieh, NIO’s chief financial officer. “The delivery of 3,318 ES8s in December exceeded our expectation, which was in part due to accelerated deliveries made at the year end in anticipation of expected EV subsidy reductions in China in 2019. Despite an overall challenging automotive market and the seasonal low demand in the first quarter, we remain committed to expanding our sales network and strengthening our brand to support our future growth.”

## NIO ES8 Delivery Volume

2018	Jun	Jul	Aug	Sep	Oct	Nov	Dec
<b>Monthly Units of Delivery</b>	100 <sup>(1)</sup>	381	1,121	1,766	1,573	3,089	3,318
<b>Cumulative Units of Delivery</b>	100 <sup>(1)</sup>	481	1,602	3,368	4,941	8,030	11,348

37. Defendant Li's representations that he was "pleased with the solid ramp-up in production and delivery in 2018" and Nio was "strengthening our brand to support our future growth" notwithstanding seasonality or market conditions were materially false and misleading because he failed to disclose that Nio ES8 deliveries were not growing, but, in fact, had materially declined. Further, Li's representation that December 2018 deliveries "accelerated" in anticipation of expected EV subsidy reductions in China in 2019 was materially false and misleading because he failed to disclose that deliveries stopped accelerating, but, in fact, were materially declining.

38. On January 29, 2019, the Company filed a report with the SEC on Form 6-K that contained “Management’s Discussion and Analysis of Financial Condition and Results of Operations” that was included in the Company’s offering memorandum dated January 29, 2019 in connection with a proposed offering of \$650 million of convertible senior notes.

39. The Company's Management's Discussion and Analysis of Financial Condition and Results of Operations stated, in part, the following:

We began making deliveries of the seven-seater ES8 to users on June 28, 2018, and we recorded revenues of RMB46.0 million (US\$6.7 million) in June 2018 and RMB1,515.6 million (US\$220.7 million) for the nine months ended September 30, 2018, which mainly consisted of revenues from the sales of our vehicles.

1 (including a number of embedded products and services offered  
 2 together with the sale of vehicles), revenues from our services  
 3 including charging solutions such as our energy package and one-off  
 4 usage of our Power Express services, as well as revenues from  
 monthly fees, excluding those fees for statutory and third-party  
 liability insurance and car damage insurance paid directly to third-  
 party insurers, under our service package.

5 40. Defendants' representations that Nio's revenues were materially growing were  
 6 materially false and misleading because they failed to disclose that, by the beginning of the Class  
 7 Period, sales of ES8s and revenues had stopped growing and were materially declining. Indeed, Nio  
 8 sales in January 2019 fell off a cliff, declining over 45% from December 2018 sales.

9 41. Furthermore, Defendants' failure to disclose in Nio's Management's Discussion and  
 10 Analysis of Financial Condition and Results of Operations that E8S deliveries and related revenue  
 11 had materially declined in January 2019 and that the negative trends affecting Nio sales and revenues  
 12 would continue through the first quarter and into the second quarter of 2019 violated Regulation S-  
 13 K Item 303(a)(3)(ii), which required disclosure by Defendants of "any known trends or uncertainties  
 14 that have had or that the registrant reasonably expects will have a material . . . unfavorable impact  
 15 on net sales or revenues or income from continuing operations."

16 42. According to a UBS analyst report, on a conference call on January 30, 2019 to  
 17 discuss the proposed issuance of \$650 million in convertible notes, Nio management represented  
 18 that demand for Nio vehicles was "resilient":

19 **NIO updated on its backlog**

20 During the conference call on Jan 30 for the proposed issuance of  
 21 \$650mn convertible notes, NIO's management gave investors  
 22 updates on the latest backlog. The introduction model ES8 still sees  
 23 5k unfulfilled orders, while the upcoming ES6 has attracted 6k orders  
 24 to date, with another ~17k prospective customers who has intended  
 for test drives. We think the backlog number improved visibility for  
 ES8 delivery volume in this quarter, and considering that ES6 will  
 not launch until Jun 2019, the early order book colour may ease some  
 concerns from investors, in our view. . . .

25 **Subsidy cut remains as overhang**

26 Management expected the new NEV subsidy policy to be announced  
 27 after Chinese New Year holidays, and suggested that the current  
 consensus is roughly 50% cut in subsidy per car. Management  
 believes the change in subsidy scheme will have much less impact to

1 NIO than to the mass market NEV makers, as premium car buyers  
 2 are less price sensitive and he expects the demand to be resilient.

3 43. Defendants' representation that Nio management "expects the demand to be  
 4 resilient" was materially false and misleading because at that time demand for Nio's ES8 had already  
 5 materially declined and the Company was experiencing material negative trends that would  
 6 negatively impact Nio vehicle sales and revenues through at least the second quarter of 2019.

7 44. On February 24, 2019, a segment aired on *60 Minutes* concerning Nio featuring  
 8 Defendant Li. The *60 Minutes* segment included the following discussion with Defendants Li:

9 *Narrator:* William Li thinks Nio will survive and points out his  
 10 Company met its modest goal of delivering 10,000 cars last year.  
 11 Why are the numbers so small at the moment? "There are always  
 12 problems and delays when a company ramps up production of  
 13 something new", Li told us. And Nio's car, he added, "are all made  
 14 to order." We visited Nio's production line, where the made-to-order  
 15 cars are assembled in a spotless, automated, high-tech factory,  
 16 dominated by a core of whirring robots. And with China's massive  
 17 manufacturing machine behind it, Nio may be able to scale up faster  
 18 than its foreign competitors.

19 45. Defendant Li's representations were materially false and misleading because he  
 20 failed to disclose that Nio's deliveries of ES8s during January and February 2019 materially  
 21 declined, that the negative trends would continue to negatively affect the Company's vehicle sales  
 22 and revenues through the second quarter of 2019, and that the Company's "made-to-order" model  
 23 of business had experienced material manufacturing difficulties for at least six months.

24 **VI. THE TRUTH BEGINS TO EMERGE**

25 46. As set forth above, on March 5, 2019, after the close of the market, Defendants  
 26 shocked investors when they disclosed that for January 2019, the Company delivered 1,805 ES8s, a  
 27 decline of over 45% from December 2018, and for February 2019, the Company delivered 811 ES8s,  
 28 a decline of over 55% from January 2019 deliveries, and that the Company expected weakness in  
 sales to continue through at least the second quarter of 2019.

47. On March 6, 2019, Nio's ADSs declined from a closing price on March 5, 2019 of  
 \$10.19 per ADS, to close at \$8.01 per ADS, a decline of \$2.01 per ADS or over 21%, on heavy

1 trading volume. On March 7, 2019, Nio ADSs declined an additional \$0.92 per ADS or over 11%  
 2 to close at \$7.09 per ADS.

3 **VII. ADDITIONAL SCIENTER ALLEGATIONS**

4 48. As alleged herein, Defendants acted with scienter in that Defendants knew that the  
 5 public documents and statements issued or disseminated in the name of the Company were  
 6 materially false and misleading; knew that such statements or documents would be issued or  
 7 disseminated to the investing public; and knowingly and substantially participated or acquiesced in  
 8 the issuance or dissemination of such statements or documents as primary violations of the federal  
 9 securities laws. As set forth elsewhere herein in detail, Defendants, by virtue of their receipt of  
 10 information reflecting the true facts regarding Nio, their control over, and/or receipt and/or  
 11 modification of Nio's allegedly materially misleading misstatements and/or their associations with  
 12 the Company which made them privy to confidential proprietary information concerning Nio,  
 13 participated in the fraudulent scheme alleged herein.

14 49. Defendants knew, or with deliberate recklessness disregarded, the falsity and  
 15 misleading nature of the information which they caused to be disseminated to the investing public.  
 16 The ongoing fraudulent scheme described in this complaint could not have been perpetrated over a  
 17 substantial period of time, as has occurred, without the knowledge and complicity of the personnel  
 18 at the highest level of the Company, including the Individual Defendants.

19 50. Defendants had the motive and opportunity to perpetrate the fraudulent scheme and  
 20 course of business described herein because the Individual Defendants were the most senior officers  
 21 of Nio, issued statements and press releases on behalf of Nio and had the opportunity to commit the  
 22 fraud alleged herein. Defendants were motivated to conceal the fraud alleged herein in order to raise  
 23 capital for the Company. On February 4, 2019, the Company disclosed the closing of a \$650 million  
 24 convertible senior notes offering.

25 **VIII. LOSS CAUSATION/ECONOMIC LOSS**

26 51. During the Class Period, as detailed herein, Defendants engaged in a scheme to  
 27 deceive the market and a course of conduct that artificially inflated Nio's ADS price and operated  
 28 as a fraud or deceit on Class Period purchasers of Nio ADSs by misrepresenting the Company's

1 operating condition and future business prospects. Defendants achieved this by making positive  
 2 statements about Nio's business and financial results while they knew, or disregarded with deliberate  
 3 recklessness, the adverse facts alleged above.

4       52. Later, however, when Defendants' prior misrepresentations were disclosed and  
 5 became apparent to the market, the price of Nio's ADSs fell precipitously as the prior artificial  
 6 inflation came out of Nio's ADS price.

7       53. As a result of their purchases of Nio ADSs during the Class Period, Plaintiff and  
 8 other members of the Class suffered economic loss, *i.e.*, damages under the federal securities laws.

9       54. As a direct result of the public revelations regarding the truth about the condition of  
 10 Nio's business and the negative adverse factors that had been impacting Nio's business during the  
 11 Class Period, the price of Nio's ADSs materially declined. This drop removed the inflation from  
 12 Nio's ADS price, causing real economic loss to investors who purchased Nio ADSs during the Class  
 13 Period.

14       55. The decline in Nio's ADS price at the end of the Class Period was a direct result of  
 15 the nature and extent of Defendants' fraud finally being revealed to investors and the market. The  
 16 timing and magnitude of Nio's ADS price declines negate any inference that the loss suffered by  
 17 Plaintiff and other Class members was caused by changed market conditions, macroeconomic or  
 18 industry factors, or Company-specific facts unrelated to the Defendants' fraudulent conduct.

19       **IX. FRAUD-ON-THE-MARKET DOCTRINE**

20       56. At all relevant times, the market for Nio's ADSs was an efficient market for the  
 21 following reasons, among others:

22           (a) The Company's ADSs met the requirements for public listing and were listed  
 23 and actively traded on the NYSE, a highly efficient market;

24           (b) As a regulated issuer, the Company filed periodic public reports with the  
 25 SEC and the Company was covered by analysts; and

26           (c) The Company regularly issued press releases which were carried by national  
 27 news wires. Each of these releases was publicly available and entered the public marketplace.

1       57. As a result, the market for the Company’s publicly traded ADSs promptly digested  
2 current information with respect to Nio from all publicly available sources and reflected such  
3 information in the price of the Company’s ADSs. Under these circumstances, all purchasers of the  
4 Company’s publicly traded ADSs during the Class Period suffered similar injury through their  
5 purchase of the publicly traded ADSs of Nio at artificially inflated prices and a presumption of  
6 reliance applies.

## X. NO SAFE HARBOR

8        58. The statutory safe harbor provided for forward-looking statements under certain  
9 circumstances does not apply to any of the allegedly false statements pleaded in this complaint.  
10 Many of the specific statements pleaded herein were not identified as “forward-looking statements”  
11 when made.

12        59. To the extent there were any forward-looking statements, there were no meaningful  
13 cautionary statements identifying important factors that could cause actual results to differ  
14 materially from those in the purportedly forward-looking statements.

15       60. Alternatively, to the extent that the statutory safe harbor does apply to any forward-  
16 looking statements pleaded herein, Defendants are liable for those false forward-looking statements  
17 because at the time each of those forward-looking statements was made, the particular speaker knew  
18 that the particular forward-looking statement was false, and/or the forward-looking statement was  
19 authorized and/or approved by an executive officer of Nio who knew that those statements were  
20 false when made.

## XI. RELIEF REQUESTED

**FIRST CLAIM FOR RELIEF**  
For Violation of Section 10(b) of the 1934 Act  
and Rule 10b-5 Against All Defendants

24 61. Plaintiff repeats and re-alleges each and every allegation contained above as if fully  
25 set forth herein

62. During the Class Period, Defendants disseminated or approved the false statements  
specified above, which they knew, or deliberately recklessly disregarded, were materially false and  
misleading in that they contained material misrepresentations and failed to disclose material facts

1 necessary in order to make the statements made, in light of the circumstances under which they were  
2 made, not misleading.

3 63. Defendants violated Section 10(b) of the 1934 Act and Rule 10b-5 in that they:

4 (a) Employed devices, schemes and artifices to defraud;

5 (b) Made untrue statements of material facts or omitted to state material facts  
6 necessary in order to make statements made, in light of the circumstances under which they were  
7 made not misleading; or

11       64. Plaintiff and the Class have suffered damages in that, in reliance on the integrity of  
12 the market, they paid artificially inflated prices for Nio's publicly traded ADSs. Plaintiff and the  
13 Class would not have purchased Nio's ADSs at the prices they paid, or at all, if they had been aware  
14 that the market prices had been artificially and falsely inflated by Defendants' misleading  
15 statements.

16 65. As a direct and proximate result of these Defendants' wrongful conduct, Plaintiff  
17 and the other members of the Class suffered damages in connection with their purchases of Nio's  
18 ADSs during the Class Period.

**SECOND CLAIM FOR RELIEF**  
**For Violation of Section 20(a) of the 1934 Act**  
**Against the Individual Defendants**

21 66. Plaintiff repeats and re-alleges each and every allegation contained above as if full  
22 set forth herein.

23       67. The Individual Defendants each acted as a controlling person of Nio within the  
24 meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their high-level  
25 positions, and ownership and contractual rights, participation in or awareness of the Company's  
26 operations or intimate knowledge of the statements filed by the Company with the SEC and  
27 disseminated to the investing public, the Individual Defendants had the power to influence and  
28 control and did influence and control, directly or indirectly, the decision-making of the Company,

1 including the content and dissemination of the various statements that Plaintiff contends are false  
 2 and misleading. The Individual Defendants were provided with or had unlimited access to copies  
 3 of the Company's reports, press releases, public filings and other statements alleged by Plaintiff to  
 4 be misleading before or shortly after these statements were issued and had the ability to prevent the  
 5 issuance of the statements or cause the statements to be corrected.

6       68.     In particular, the Individual Defendants had direct and supervisory involvement in  
 7 the day-to-day operations of the Company and, therefore, are presumed to have had the power to  
 8 control or influence the particular transactions giving rise to the securities violations as alleged  
 9 herein, and exercised the same.

10       69.     As set forth above, Nio and the Individual Defendants each violated Section 10(b)  
 11 and Rule 10b-5 by their acts and omissions as alleged in this Complaint. By virtue of their positions  
 12 each as a controlling person, the Individual Defendants is liable pursuant to Section 20(a) of the  
 13 Exchange Act. As a direct and proximate result of Nio's and the Individual Defendant's wrongful  
 14 conduct, Plaintiff and other members of the Class suffered damages in connection with their  
 15 purchases of the Company's ADS during the Class Period.

16       **XI. PRAYER FOR RELIEF**

17       WHEREFORE, Plaintiff prays for judgment as follows:

- 18       A.     Declaring this action to be a proper class action;
- 19       B.     Awarding damages, including interest; awarding reasonable costs, including  
 20 attorneys' fees; and
- 21       C.     Such equitable/injunctive relief as the Court may deem proper.

22       ///

23       ///

24       ///

25       ///

26       ///

27       ///

28       ///

## XII. JURY DEMAND

Plaintiff demands a trial by jury.

Dated: March 12, 2018

# KAPLAN FOX & KILSHEIMER LLP

By: /s/ Laurence D. King  
Laurence D. King

Laurence D. King (SBN 206423)  
*lking@kaplanfox.com*  
Mario M. Choi (SBN 243409)  
*mchoi@kaplanfox.com*  
350 Sansome Street, Suite 400  
San Francisco, CA 94104  
Telephone: (415) 772-4700  
Facsimile: (415) 772-4709

**KAPLAN FOX & KILSHEIMER LLP**  
Robert N. Kaplan (to be admitted *pro hac vice*)  
*rkaplan@kaplanfox.com*  
Jeffrey P. Campisi (to be admitted *pro hac vice*)  
*jcampisi@kaplanfox.com*  
850 Third Avenue, 14th Floor  
New York, NY 10022  
Tel: (212) 687-1980  
Fax: (212) 687-7714

*Attorneys for Plaintiff*

**CERTIFICATION**

I, Mark Sidoli, hereby certify and swear as follows:

1. I have reviewed a complaint prepared against Nio Inc. and certain of its executives alleging violations of the securities laws.
2. I am willing to serve as a representative party on behalf of a class, or to be a member of a group representing a class, including providing testimony at deposition and trial, if necessary.
3. Within the 3-year period preceding the date hereof, I have not sought to serve or served as a representative party on behalf of a class in any action brought under the federal securities laws.
4. My transactions in Nio Inc. securities during the proposed class period are set forth below:

Security	Transaction	Trade Date	Shares	Price Per Share
Nio Inc. ADS	Purchase	1/14/19	150	\$6.91
Nio Inc. ADS	Purchase	1/28/19	250	\$6.64
Nio Inc. ADS	Purchase	1/29/19	1,000	\$6.97
Nio Inc. ADS	Purchase	2/7/19	120	\$8.18
Nio Inc. ADS	Purchase	2/12/19	700	\$7.45
Nio Inc. ADS	Purchase	2/13/19	700	\$7.68
Nio Inc. ADS	Purchase	2/27/19	1,400	\$10.22
Nio Inc. ADS	Sale	1/29/19	900	\$6.98
Nio Inc. ADS	Sale	2/12/19	1,420	\$7.29
Nio Inc. ADS	Sale	2/26/19	1,400	\$9.76

5. I did not purchase Nio Inc. securities at the direction of my counsel, or in order to participate in any private action under the federal securities laws; and
6. I will not accept any payment for serving as a representative party on behalf of a class beyond my pro rata share of any recovery, except as ordered or approved by the Court.

I declare under penalty of perjury that the foregoing is true and correct.

Date: March 12, 2019



MARK SIDOLI